

**AGENDA FOR THE  
REGULAR COUNCIL MEETING OF  
MONDAY, SEPTEMBER 18, 2006 AT 2:00 P.M.  
CITY ADMINISTRATION BUILDING  
COUNCIL CHAMBERS – 12<sup>TH</sup> FLOOR  
202 “C” STREET  
SAN DIEGO, CA 92101**

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ITEM-1:                      ROLL CALL.

ITEM-10:                    INVOCATION.

ITEM-20:                    PLEDGE OF ALLEGIANCE.

**NON-AGENDA PUBLIC COMMENT**

Non-agenda public comment is taken on Tuesday pursuant to the San Diego Municipal Code Section 22.0101.5.

**MAYOR, COUNCIL, INDEPENDENT BUDGET ANALYST, CITY ATTORNEY  
COMMENT**

**UPDATES ON PENDING LEGISLATION (MAYOR’S OFFICE)**

**REQUESTS FOR CONTINUANCE**

The Council will now consider requests to continue specific items.

**=== LEGISLATIVE SCHEDULE ===**

Adoption Agenda, Discussion, Committee Items

ITEM-150:

In the Matter of Regulating Large Retail Development.

MAYOR'S RECOMMENDATION: Adopt items 3, 4 and 6 of the former City Manager's recommendation which are included in the former City Manager's proposed strikeout ordinance relating to the review and approval of "Large retail establishments" previously defined as retail stores equate to, or larger than, "50,000 square feet of gross floor area."

These items include new and additional design and landscape guidelines, as well as approval processes which would permit greater public involvement. Accept the Planning Commission's recommendation of no size limitation. Do not approve a Stock Keeping Unit ("SKU") ordinance.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 6/29/2005, LU&H voted 4 to 0 to approve Nos. 3, 4, and 6 of the City Manager's recommendations (CMR-05-136) and refer the remaining elements of the City Manager's recommendation as well as the Stock Keeping Unit ("SKU") Ordinance to the City Council without recommendation. Additionally, the Committee referred the SKU Ordinance to the City Attorney and asked for a legal review of the proposed Ordinance to be prepared prior to City Council consideration of this issue.

Noticed Hearings, Discussion

ITEM-200:

Congregation Adat Yeshurun. (University and La Jolla Community Plan Areas. District 1.)

Matter of the appeal by Sherri Lightner of the decision by the Planning Commission to approve an application for Public Right-of-Way Use Permit and a Site Development Permit to install an ERUV line of demarcation for Congregation Adat Yeshurun at the following locations: Torrey Pines Road/La Jolla Villa Drive; Gilman Drive/La Jolla Village Drive; La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive; La Jolla Village Drive between Villa La Jolla Drive and the Interstate 5 South on-ramp; Nobel Drive/Interstate 5 South on-ramp; Gilman Drive near Interstate 5 South on-ramp; North La Jolla Scenic Drive/La Jolla Parkway; La Jolla Parkway/Torrey Pines Road; and Glenbrook Way and Torrey Pines Road.

STAFF'S RECOMMENDATION: Take the actions.

**=== LEGISLATIVE SCHEDULE (Continued) ===**

Noticed Hearings, Discussion (Continued)

**NOTE: It is anticipated that this item will be continued to Monday, September 25, 2006.**

ITEM-201:                   Armstrong Residence. (La Jolla Community Plan Area. District 1.)

Matter of the appeal by the La Jolla Community Planning Association of the environmental determination associated with a Coastal Development Permit application for the construction of a two-story, 2,883 square-foot single family residence, with an attached 483 square foot, two-car garage on an existing vacant 7,812 square foot lot, located at 5746 La Jolla Mesa Drive in the RS-1-5, Coastal Overlay (non-appealable), and Coastal Height Limit Overlay Zones within the La Jolla Community Plan Area.

STAFF'S RECOMMENDATION: Take the actions.

**CLOSED SESSION NOTICES, DISCLOSURE, AND PUBLIC COMMENT**

In accordance with the San Diego City Council Permanent Rule for Noticing and Conduct of Closed Session Meeting, adopted on February 28, 2005, this portion of the agenda is reserved for City Attorney comment, public comment, and City Council discussion of the content of the Closed Session Agenda. Public testimony on Closed Session items is taken in Open Session on Monday's, except when there is no Monday meeting. Public testimony on Closed Session items is always taken prior to the actual Closed Session. Closed Session may take place any time after public testimony, but is typically held on Tuesdays at 9:00 a.m. The Closed Session Agenda is separately available in the Office of the City Clerk and also posted at the same locations as the Open Session Agenda, including the City internet address.

**NOTE:** Members of the public wishing to address the City Council on any item on the Closed Session Agenda should reference the closed session item number from the Closed Session Docket on the speaker slip. Speakers may speak "in favor" or "in opposition" to the subject.

**Information Item - No Action Required - The City Council shall:**

1) Consider any oral report from the City Attorney or City negotiators; 2) Accept testimony from any member of the public wishing to address the City Council on any item appearing on the Closed Session Agenda; 3) Questions and discussion by Council Members, limited to the facts as disclosed by the City Attorney or City negotiators and the basis or justification for consideration of the matter in closed session 4) Refer matters discussed to closed session.

=== **LEGISLATIVE SCHEDULE (Continued)** ===

Public Notices

ITEM-250:           **Notice** of Pending Final Map Approval – Palisade Gardens.

ITEM-251:           **Notice** of Pending Final Map Approval – 4222 Felton Street  
Condominiums.

Non-Docket Items

Adjournment in Honor of Appropriate Parties

Adjournment

**=== EXPANDED CITY COUNCIL AGENDA ===**

**ADOPTION AGENDA, DISCUSSION, COMMITTEE ITEMS**

**COMMITTEE ON LAND USE AND HOUSING:**

ITEM-150: In the Matter of Regulating Large Retail Development.

(See Report to the City Council No. 06-124, not available at Committee; letter from Louis Wolfsheimer dated 6/27/2005; letter from George T. Ray dated 6/27/2005; fax from Matthew A. Peterson dated 6/29/2005; and Matrix comparison of all recommendations against Manager's recommendations.)

**TODAY'S ACTION IS:**

Discussion and direction to Staff and the Office of City Attorney regarding regulation of all large retail establishments in the City of San Diego.

Directing the City Attorney to prepare the appropriate ordinance in accordance with Charter Section 40.

**MAYOR'S RECOMMENDATION:**

Adopt items 3, 4 and 6 of the former City Manager's recommendation which are included in the former City Manager's proposed strikeout ordinance relating to the review and approval of "Large retail establishments" previously defined as retail stores equate to, or larger than, "50,000 square feet of gross floor area." These items include new and additional design and landscape guidelines, as well as approval processes which would permit greater public involvement. Accept the Planning Commission's recommendation of no size limitation. Do not approve a Stock Keeping Unit ("SKU") ordinance.

**LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:**

On 6/29/2005, LU&H voted 4 to 0 to approve Nos. 3, 4, and 6 of the City Manager's recommendations (CMR-05-136) and refer the remaining elements of the City Manager's recommendation as well as the Stock Keeping Unit ("SKU") Ordinance to the City Council without recommendation. Additionally, the Committee referred the SKU Ordinance to the City Attorney and asked for a legal review of the proposed Ordinance to be prepared prior to City Council consideration of this issue. (Councilmembers Peters, Atkins, Young, and Frye voted yea. Councilmember Inzunza not present.)

**ADOPTION AGENDA, DISCUSSION, HEARINGS**

**NOTICED HEARINGS:**

ITEM-200: Congregation Adat Yeshurun.

Matter of the appeal by Sherri Lightner of the decision by the Planning Commission to approve an application for Public Right-of-Way Use Permit and a Site Development Permit to install an ERUV line of demarcation for Congregation Adat Yeshurun at the following locations: Torrey Pines Road/La Jolla Villa Drive; Gilman Drive/La Jolla Village Drive; La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive; La Jolla Village Drive between Villa La Jolla Drive and the Interstate 5 South on-ramp; Nobel Drive/Interstate 5 South on-ramp; Gilman Drive near Interstate 5 South on-ramp; North La Jolla Scenic Drive/La Jolla Parkway; La Jolla Parkway/Torrey Pines Road; and Glenbrook Way and Torrey Pines Road.

(PTS No. 48467/Mitigated Negative Declaration No. 48467/Public Right-of-Way Permit No. 138132/Site Development Permit No. 295484. University and La Jolla Community Plan Areas. District 1.)

**STAFF'S RECOMMENDATION:**

Take the following actions:

Subitem-A:

Certifying that the information contained in Mitigated Negative Declaration No. 48467 has been completed in compliance with the California Environmental Quality Act of 1970 and State CEQA Guidelines, and that said Mitigated Negative Declaration reflects the independent judgment of the City of San Diego as lead agency; stating for the record that the final Mitigated Negative Declaration has been reviewed and considered prior to approving the project; and adopting the Mitigation, Monitoring and Reporting Program (MMRP).

Subitem-B:

Granting or denying Public Right-of-Way Use Permit No. 138132, Site Development Permit No. 295484, and granting or denying the appeal, and upholding or overturning the decision of the Planning Commission to approve the project, with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolutions according to Section 40 of the City Charter.



ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-200: (Continued)

**OTHER RECOMMENDATIONS:**

Planning Commission on June 22, 2006, voted 4-2 to approve.

Nays: Chase, Griswold

Ays: Schultz, Garcia, Ontai, Otsuji

Recusing: Steele

The La Jolla Community Planning Group has recommended denial of this project.

**STAFF SUPPORTING INFORMATION:**

The La Jolla Shores Association filed the appeal to request the City Council deny the proposed project. The Congregation Adat Yeshurun was established in the University Community in 1987 and moved to the La Jolla Community in 2000. The congregation has been located at 8625 La Jolla Scenic Drive North since 2000. The congregation is an Orthodox Jewish community comprised of approximately 285 families. The congregation has strong social and economic ties to the surrounding neighborhood.

The Congregation Adat Yeshurun is requesting approval of a Public Right-of-Way Use Permit and a Site Development Permit to establish an Eruv line within proximity of their synagogue. An Eruv line is a symbolic "wall" enclosing the area around the synagogue. The area within the confines of the Eruv line is considered a single "private domain" by the members of the congregation which in turn allows certain activities to be undertaken on the Sabbath in compliance with Jewish Law.

A Public Right-of-Way Use Permit No. 138132 and Site Development Permit No. 295484 is required. In order to approve the proposed encroachment, the decision maker must make all of the required findings. A Public Right-of-Way Use Permit requires affirming: the encroachment is reasonably related to public travel, or benefits a public purpose, or all abutting property owners have given the applicant permission to maintain the encroachment, the proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel, the proposed encroachment is not detrimental to the public health, safety or welfare, the proposed encroachment does not interfere with the record owners' use or enjoyment of their property, the proposed encroachment does not adversely affect the land use plan, the proposed encroachment is not be harmful to the aesthetic character of the community, the proposed encroachment does not violate any other Municipal Code provisions or other local, state or federal law. A Site Development Permit requires affirming:

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-200: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

The proposed development will not adversely affect the applicable land use plan, the proposed development will not be detrimental to the public health, safety, and welfare, the proposed development will comply with the applicable regulations of the Land Development Code. Staff has determined all of these required findings can be supported and the project approved.

The appellant believes the proposed line of demarcation does not meet all of the required findings and therefore cannot be approved. Other issues raised by the appellant are: How are multiple requests for use of the public right-of-way be regulated and how are street trees to be protected? All requests for Public Right-of-Way Use Permits will be decided, after thorough analysis by staff, at a noticed public hearing in accordance with the requirements of the Land Development Code §126.0900. The installation of Eruv lines will have no negative impact to existing street trees. Staff has reviewed the appeal and maintains the findings can be supported. For a full and complete discussion of the proposed project refer to Planning Commission Report PC-06-126. Staff recommends the City Council deny the appeal and uphold the Planning Commission approval.

**FISCAL CONSIDERATIONS:**

None with this action. All costs are recovered through a deposit account funded by the applicant.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

There have been no previous Council or Committee action in this matter.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On December 13, 2005, the University Community Planning Group voted 12-0-0 to recommend that the Planning Commission approve the proposed project with no additional conditions. On March 2, 2006, the La Jolla Community Planning Group voted 11-0-0 to recommend that the Planning Commission deny the proposed project. On March 21, 2006, the La Jolla Shores Advisory Board voted 4-3-0 recommending that the Planning Commission approve the project with no conditions.

**KEY STAKEHOLDERS:**

Congregation Adat Yeshurun, Applicant.

Halbert/Waring/JF

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-200: (Continued)

**LEGAL DESCRIPTION:**

The project site is described as portions of the public right-of-way located between the curb and adjacent property lines specifically located at the following eleven locations: Section 1 - Torrey Pines Road/La Jolla Village Drive; Section 2 - Gilman Drive/La Jolla Drive; Section 3 and 4 - La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive; Section 5 - La Jolla Village Drive between Villa La Jolla Drive and the south on-ramp to the Interstate 5; Section 6 - Nobel Drive/Interstate 5 South on-ramp; Section 7 - Gilman Drive/Interstate 5 South on-ramp; Section 8 - Across a frontage road just south of Section 7; Section 9 - North La Jolla Scenic Drive/La Jolla Parkway; Section 10 - La Jolla Parkway/Torrey Pines Road; and Section 11 - Glenbrook Way/Torrey Pines Road.

Staff: John S. Fisher – (619) 446-5231

**NOTE:** This item is not subject to Mayor's veto.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

**NOTE:** It is anticipated that this item will be continued to Monday, September 25, 2006.

ITEM-201: Armstrong Residence.

Matter of the appeal by the La Jolla Community Planning Association of the environmental determination associated with a Coastal Development Permit application for the construction of a two-story, 2,883 square-foot single family residence, with an attached 483 square foot, two-car garage on an existing vacant 7,812 square foot lot, located at 5746 La Jolla Mesa Drive in the RS-1-5, Coastal Overlay (non-appealable), and Coastal Height Limit Overlay Zones within the La Jolla Community Plan Area.

(La Jolla Community Plan Area. District 1.)

(Continued from the meeting of August 1, 2006, Item 331, at the request of Councilmember Madaffer, for further review.)

**NOTE:** Hearing open. No public testimony taken on August 1, 2006.

**STAFF'S RECOMMENDATION:**

Take the following actions:

Denying the appeal and certifying Negative Declaration No. 3511.

Directing the City Attorney to prepare the appropriate resolution according to Section 40 of the City Charter.

**OTHER RECOMMENDATIONS:**

Planning Commission on March 16, 2006, voted 5-0 to deny; was opposition.

Ayes: Schultz, Garcia, Griswold, Ontai, Otsuji

Abstaining: Chase, Steele

The La Jolla Community Planning Association has recommended denial of this project.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-201: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

On March 16, 2006, Planning Commission denied an appeal of the CDP and approved the project with a vote of 5-0. On March 29, 2006, the La Jolla Community Planning Association appealed the Negative Declaration.

Certification of Negative Declaration No. 3511 would complete the process for the project since the Planning Commission's action on March 16, 2006 has approved the Coastal Development Permit. The City Council could choose to not certify the Negative Declaration and request that the City prepare a Mitigated Negative Declaration or Environmental Impact Report. The City Council is acting on the environmental determination only and not on the Coastal Development Permit.

**PREVIOUS COMMITTEE ACTION**

**Planning Commission Decision:** On March 16, 2006, the Planning Commission voted 5-0 to deny the appeal of the project and approve the Coastal Development Permit.

**Basis for Appeal:** The environmental concerns listed by the appellant include aesthetics/neighborhood character, biology, geology/soils and land use as outlined within the Initial Study Checklist of the Negative Declaration.

**Staff Response:**

**Aesthetics/Neighborhood Character:** The project design will have a one-story appearance from the street, with the house stepping down the site similar in design to surrounding residences and would not impact the existing pine trees adjacent to the proposed residence. Proposed grading would consist of approximately 535 cubic yards of cut. The amount of grading proposed is below the threshold of CEQA significance. A Notice of Geotechnical Conditions was recorded on the land to hold the city harmless from potential damages resulting from the existing slope instability (Attachment 1). The geotechnical consultant has opined that the site can be built in a geologically safe and stable manner. The site does have a grade differential in excess of 25% gradient and therefore was evaluated under the Environmentally Sensitive Lands, Steep Hillside Regulations (Attachment 2). The definitions within the Municipal Code state that Steep Hillside means all lands that have a slope with a natural gradient of 25 percent or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent or greater and a minimum elevation differential of 10 feet (Attachment 3). Based on the soils reported submitted, it was determined that the entire site had been previously disturbed and therefore not subject to the Steep Hillside Regulations.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-201: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

**Biology:** The biological survey report prepared for the proposed project indicated that none of the existing trees on the project site contained nests. Therefore, no impacts to nesting birds are anticipated due to the removal of existing on-site trees. The project proposes to retain six existing king palms and two existing eucalyptus trees.

**Geology/Soils:** The geotechnical consultant has opined that the site can be built in a geologically safe and stable manner. Condition No. 13 was revised at the Planning Commission hearing to require additional geotechnical review during the review of the grading plan including analysis of the impact of the project on slope stability and the adjoining properties. The geotechnical consultant has opined that the existing slope has a factor of safety less than 1.5. A Notice of Geotechnical Conditions was recorded on the land to hold the City harmless from potential damages resulting from the existing slope instability (Attachment 1). However, once the proposed project is constructed, the site would have a factor of greater than 1.5 as stated by the geotechnical consultant within the reports submitted to staff for review. There is additional review required during the review of the grading/building plans for the proposed residence. This additional review will ensure that the proposed residence will not impact adjacent properties and that the site will have a factor of safety greater than 1.5.

**Land Use:** The 2004 La Jolla Community Plan and Local Coastal Program Land Use Plan states (page 51) that the City shall apply the Environmentally Sensitive Lands regulations to all new development on property in La Jolla having slopes with a natural gradient of 25 percent or greater and a minimum differential of 50 feet. Based on the soils reported submitted and reviewed by staff, it was determined that the entire site had been previously disturbed and therefore not subject to the Steep Hillside Regulations.

**FISCAL CONSIDERATIONS:**

There is no fiscal impact. The project includes a deposit account paid for by the applicant.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On November 3, 2005, the La Jolla Community Planning Association voted 12-0-0 to recommend denial of the project.

**KEY STAKEHOLDERS:**

David Ferradino, Owner (Attachment 4), Thomas Armstrong Construction Inc., Owner/Applicant and La Jolla Community Planning Association – Phil Merten, Appellant.

Halbert/Waring/LCB

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-201: (Continued)

**LEGAL DESCRIPTION:**

The proposed project is located at 5746 La Jolla Mesa Drive, between Baja Mar and Skylark Drive, within the Coastal Zone and the La Jolla Community Planning Area and is more particularly described as Parcel 1, Parcel Map 3254.

Staff: Laura Black – (619) 446-5112

**NOTE:** This item is not subject to Mayor's veto.

**CLOSED SESSION NOTICES, DISCLOSURE, AND PUBLIC COMMENT**

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**Information Item - No Action Required - The City Council shall:**

1) Consider any oral report from the City Attorney or City negotiators; 2) Accept testimony from any member of the public wishing to address the City Council on any item appearing on the Closed Session Agenda; 3) Questions and discussion by Council Members, limited to the facts as disclosed by the City Attorney or City negotiators and the basis or justification for consideration of the matter in closed session 4) Refer matters discussed to closed session.



**PUBLIC NOTICES:**

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony.

**ITEM-250: Notice of Pending Final Map Approval – Palisade Gardens.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Palisade Gardens” (T.M. No. 174401/PTS No. 93405), located on the northwest corner of Utah Street and University Avenue in the Greater North Park Community Plan Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

PUBLIC NOTICES: (Continued)

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony.

ITEM-251: **Notice** of Pending Final Map Approval – 4222 Felton Street Condominiums.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “4222 Felton Street Condominiums” (T.M. No. 104941/PTS No. 97068), located on the west side of Felton Street between Orange Avenue and El Cajon Boulevard in the Greater North Park Community Plan Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

NON-DOCKET ITEMS

ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES

ADJOURNMENT